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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

MMB Docket No. 1001-0784

NCR Docket No. 10183

Group Art Unit: 2841

Application of: Nugent Jr.

Examiner: R. Gibson

Serial No.: 10/024,800

Filed: December 19, 2001

Title: A Scale

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Paul J. Maginot
Signature

February 3, 2006

Date of Signature

AMENDED APPEAL BRIEF TRANSMITTAL

Sir:

Enclosed is an Amended Appeal Brief in connection with the above-identified patent application. The U.S. Patent and Trademark Office is hereby authorized to charge any fee deficiency or credit any overpayment, to our Deposit Account No. 13-0014, but not to include any payment of issue fees. If extensions of time under 37 C.F.R. § 1.136 are required to prevent abandonment of the present patent application, then such extensions of time are hereby petitioned for, and any fees therefore are hereby authorized to be charged to our Deposit Account No. 13-0014.

Respectfully submitted,

MAGINOT, MOORE & BECK LLP

Paul J. Maginot
Paul J. Maginot
Attorney for Appellant
Registration No. 34,984

February 3, 2006
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

NCR Docket No. **10183**

MMB Docket No. **1001-0784**

Application of: **Nugent, Jr.**

Group Art Unit: **2841**

Serial No.: **10/024,800**

Examiner: **R. Gibson**

Filed: **December 19, 2001**

For: **A Scale**

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February 3, 2006

Date of Signature

AMENDED APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal to the Board of Patent Appeals and Interferences of the United States Patent and Trademark Office from the final rejection of the claims 1-22 of the above-identified patent application. These claims were indicated as finally rejected in an Office Action dated June 23, 2004. The government fee

required for filing an Appeal Brief was previously submitted. Also, please provide any extensions of time that may be necessary and charge any fees that may be due to Deposit Account No. 13-0014, but not to include any payment of issue fees.

(1) REAL PARTY IN INTEREST

NCR Corporation of Dayton, Ohio is the assignee of this patent application, and the real party in interest.

(2) RELATED APPEALS AND INTERFERENCES

None.

(3) STATUS OF CLAIMS

Claims 1-22 are pending in the application.

Each of claims 1-22 are finally rejected.

Each of claims 1-22 are being appealed, and are shown in the Appendix attached to this Appeal Brief.

(4) STATUS OF AMENDMENTS

Appellants have filed no amendments subsequent to the final rejection contained in the Office Action mailed June 23, 2004.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

The present invention relates to a point-of-sale weight scale 10 that is configured to weigh fruits and vegetables (as well as other products being checked out of a grocery store), and has the attributes of being able to be located within any one of a number of sized bagwells of varying point-of-sale systems. In particular, the scale 10 includes a first gauge assembly having (i) a first gauge 14 operable to generate a first output in response to force being applied thereagainst, and (ii) a first elongated support member 12 positioned in relation to the first gauge 14 such that force applied against the first elongate support member 12 causes force to be applied against the first gauge 14. (See, e.g., Appellant's specification at page 3, lines 17-20; Fig. 1.) The scale 10 also includes a second gauge assembly having (i) a second gauge 14 operable to generate a second output in response to force being applied thereagainst, and (ii) a second elongated support member 12 positioned in relation to the second gauge 14 such that force applied against the second elongate support member 12 causes force to be applied against the second gauge 14. (See, e.g., Appellant's specification at page 3, lines 17-20; Fig. 1.) The scale 10 further includes a load plate 16 configured to rest on the first elongated support member 12 and the second elongated support member 12. (See, e.g., Appellant's specification at page 3, last four lines; Fig. 1.) The first gauge assembly and the second gauge assembly are structurally connected solely via the load plate 16 when the load plate 16 rests on the first elongated support member 12 and the second elongated support member 12. (See, e.g., Appellant's specification at

page 3, last four lines; Fig. 1.) The first gauge 14 and the second gauge 14 are each a strain gauge. (See, e.g., Appellant's specification at page 4, lines 17-19.) The scale further includes an electronics box 20 operable to translate the first output and the second output into a weight value. (See, e.g., Appellant's specification at page 4, lines 12-16; Fig. 1.) The first gauge 14 and the second gauge 14 are each coupled to the electronics box 20. (See, e.g., Appellant's specification at page 4, lines 12-14; Fig. 1.) The second gauge 14 is coupled to the electronics box 20 via an RS232 wire 18. (See, e.g., Appellant's specification at page 4, lines 12-14; Fig. 1.) The load plate 16 is transparent to radiation utilized to scan barcodes on items. (See, e.g., Appellant's specification at page 2, last two lines, and page 4, lines 1-3.) The first elongated support member 12 and the second elongated support member 12 are each approximately 19.4 inches (9.4. cm) long. (See, e.g., Appellant's specification at page 3, lines 6-7.) The first gauge assembly 12, 14 and the second gauge assembly 12, 14 are freely movable toward and away from each other. (See, e.g., Appellant's specification at page 3, last seven lines; Fig. 1.)

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

Claims 1, 2, 5, 8-11, and 15-19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Sternberg (Patent Application Publication # US 2002/011275 A1).

Claims 3, 4, 6, 7, 12-14, and 20-22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Sternberg (Patent Application Publication # US 2002/011275 A1).

(7) ARGUMENT

Claims 1, 2, 5, 8-11, and 15-19 were rejected under 35 U.S.C. § 102(e) as being anticipated by Sternberg (Patent Application Publication # US 2002/011275 A1) (hereinafter “Sternberg”). Further claims 3, 4, 6, 7, 12-14, and 20-22 were rejected under 35 U.S.C. § 103 as being obvious over Sternberg. Appellant respectfully requests reconsideration of these rejections by the Board of Appeals.

Part I: Claims 1-15

Discussion Re: Patentability of Claim 8

Claim 8

Among other limitations, claim 8 recites the following:

a load *plate* configured to rest on said first elongated support member and said second elongated support member. (Emphasis added.)

It is Appellant’s position that Sternberg does not disclose “a load *plate* configured to rest on said first elongated support member and said second elongated support member” as called for in claim 8. And since Sternberg does not disclose each and every element of Appellant’s claim 8, Sternberg does not anticipate Applicant’s claim 8.

In both of the Office Actions (6/23/04 and 3/4/04), it appears that the Examiner is equating the component(s) of Sternberg to which its reference numeral 12 refers with the claimed “load *plate*”. The Examiner refers to this component(s) 12 in his Office Actions as a “surface plate” and a “support plate”. (See 6/23/04 Final Office Action at page 3, lines 8-9.) However, from a review of

the text and drawings of Sternberg, this component(s) 12 is not a *plate* at all.¹ Rather, in paragraph [0037], Sternberg states that Fig. 1 shows "a bed 10 having a mattress support 12 *upon which a patient is supported*. The bed includes four legs 14" (Italics added for emphasis.) Thus, it is clear that the bed 10 in Sternberg is the entire bed-like assembly, its legs 14 included. And the mattress support 12 is the component or components of the bed 10 *upon which the patient is supported* and which is located above its legs 14. Consequently, the mattress support 12 is the combination of the top member (i.e. mattress-like object) and the bottom member (i.e. box spring-like member).² The combination of the mattress-like top member and the box spring-like bottom member of Sternberg is not a "plate" as called for in claim 8. It simple does not possess the qualities of a "plate". Therefore, Appellant respectfully requests reversal of this rejection by the Board of Appeals since Sternberg does not disclose each and every element of Appellant's claim 8.

Discussion Re: Patentability of Claims 9-15

Each of claims 9-15 depends directly or indirectly from claim 8. As a result, each of claims 9-15 is allowable for, at least, the reasons hereinbefore discussed with regard to claim 8.

¹ The term "plate" means "a flat, thin piece of material, such as metal". (See, e.g., dictionary definition in Attachment I). (See also, e.g., U.S. Patent No. 4,043,413 cited by the Examiner that shows an upper **plate** 14 in FIG. 1 - Attachment II.)

² Even if the mattress support 12 is construed to be only the bottom member (i.e. the box spring-like member) alone, or the top member (i.e. the mattress-like member) alone, such single component of the bed 10 is not a "plate", and thus does not meet the claimed "load plate" as called for in claim 8.

Discussion Re: Patentability of Claim 1

The discussion relating to the patentability of claim 8 is relevant to the patentability of claim 1. In particular, Sternberg does not disclose “a surface *plate*” as called for in claim 1. (Emphasis added.) Thus, claim 1 is believed to be allowable over the cited art.

Discussion Re: Patentability of Claims 2 -7

Each of claims 2-7 depends directly from claim 1. As a result, each of claims 2-7 is allowable for, at least, the reasons hereinbefore discussed with regard to claim 1.

Part II: Claims 16-22

Discussion Re: Patentability of Claim 16

The discussion relating to the patentability of claim 8 is relevant to the patentability of claim 16. Indeed, Sternberg does not disclose “a load *plate* resting on said first elongated support member and said second elongated support member.” (Emphasis added.) Thus, claim 16 is believed to be allowable over the cited art for the reasons set forth above with regard to claim 8.

Moreover, claim 16 specifically recites that the “load plate *rest[s] on* said first elongated support member and said second elongated support member.” (Emphasis added.) Sternberg’s mattress support 12 (i.e. the combination of its mattress-like top member and its box spring-like bottom member) does not “rest on” either of the scales 20. Rather, as shown in FIG. 5 of Sternberg, the legs 14 are interposed between the mattress support 12 and the scales 20, thereby causing the mattress support 12 to be spaced apart from the scales 20. Thus, claim 16 is further distinguishable over Sternberg, and the Board of Appeals is respectfully requested to reverse the rejection of claim 16.

Discussion Re: Patentability of Claims 17-22

Each of claims 17-22 depends directly or indirectly from claim 16. As a result, each of claims 17-22 is allowable for, at least, the reasons hereinbefore discussed with regard to claim 16.

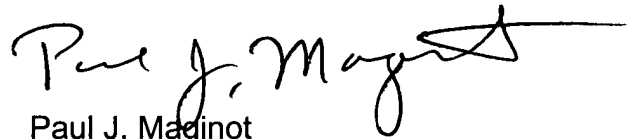
Part III: Conclusion

Claims 1, 2, 5, 8-11, and 15-19 are not unpatentable under 35 U.S.C. § 102(e) as being anticipated by Sternberg (Patent Application Publication # US 2002/011275 A1), and the Board of Appeals is respectfully requested to reverse the rejection of these claims.

Claims 3, 4, 6, 7, 12-14, and 20-22 are not unpatentable under 35 U.S.C. § 103 as being obvious over Sternberg (Patent Application Publication # US 2002/011275 A1), and the Board of Appeals is respectfully requested to reverse the rejection of these claims.

Respectfully submitted,

MAGINOT, MOORE & BECK

A handwritten signature in black ink, appearing to read "Paul J. Maginot", with a long horizontal flourish extending to the right.

Paul J. Maginot
Attorney for Appellant
Registration No. 34,984

February 3, 2006

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(8) CLAIMS APPENDIX

1. A scale comprising a pair of elongate support members, each member containing a gauge which provides an indication of the weight of an item placed across the two members, the members being structurally connected solely via a surface plate adapted to rest on the support members to provide a substantially flat surface to receive items to be weighed.

2. A scale as claimed in claim 1, wherein the gauge is a strain gauge.

3. A scale as claimed in claim 1, wherein the rigidity of the surface plate is increased as the separation of the two members is increased.

4. A scale as claimed in claim 1, wherein the plate is transparent to radiation utilized to scan barcodes on items.

5. A scale as claimed in claim 1, comprising an electronics box, which is adapted to translate the output of the gauges of the two members into a recognizable weight.

6. A scale as claimed in claim 5, wherein the box is located adjacent a first of the two members and the gauge in the second member is coupled to the box via RS232 lead.

7. A scale as claimed in claim 1, wherein each member is approximately 19.4 inches (9.4. cm) long.

8. A scale, comprising:

a first gauge assembly having (i) a first gauge operable to generate a first output in response to force being applied thereagainst, and (ii) a first elongated support member positioned in relation to said first gauge such that force applied against said first elongate support member causes force to be applied against said first gauge;

a second gauge assembly having (i) a second gauge operable to generate a second output in response to force being applied thereagainst, and (ii) a second elongated support member positioned in relation to said second gauge such that force applied against said second elongate support member causes force to be applied against said second gauge; and

a load plate configured to rest on said first elongated support member and said second elongated support member,

wherein said first gauge assembly and said second gauge assembly are structurally connected solely via said load plate when said load plate rests on said first elongated support member and said second elongated support member.

9. The scale of claim 8, wherein said first gauge and said second gauge are each a strain gauge.

10. The scale of claim 8, further comprising an electronics box operable to translate said first output and said second output into a weight value.

11. The scale of claim 10, wherein said first gauge and said second gauge are each coupled to said electronics box.

12. The scale of claim 11, wherein said second gauge is coupled to said electronics box via an RS232 wire.

13. The scale of claim 8, wherein said load plate is transparent to radiation utilized to scan barcodes on items.

14. The scale of claim 8, wherein said first elongated support member and said second elongated support member are each approximately 19.4 inches (9.4. cm) long.

15. The scale of claim 8, wherein said first gauge assembly and said second gauge assembly are freely movable toward and away from each other.

16. A scale, comprising:

a first gauge assembly having (i) a first gauge operable to generate a first output in response to force being applied thereagainst, and (ii) a first elongated support member positioned in relation to said first gauge such that force applied against said first elongate support member causes force to be applied against said first gauge;

a second gauge assembly having (i) a second gauge operable to generate a second output in response to force being applied thereagainst, and (ii) a second elongated support member positioned in relation to said second gauge such that force applied against said second elongate support member causes force to be applied against said second gauge; and

a load plate resting on said first elongated support member and said second elongated support member,

wherein said first gauge assembly and said second gauge assembly are freely movable toward and away from each other.

17. The scale of claim 16, wherein said first gauge and said second gauge are each a strain gauge.

18. The scale of claim 16, further comprising an electronics box operable to translate said first output and said second output into a weight value.

19. The scale of claim 18, wherein said first gauge and said second gauge are each coupled to said electronics box.

20. The scale of claim 19, wherein said second gauge is coupled to said electronics box via an RS232 wire.

21. The scale of claim 16, wherein said load plate is transparent to radiation utilized to scan barcodes on items.

22. The scale of claim 16, wherein said first elongated support member and said second elongated support member are each approximately 19.4 inches (9.4. cm) long.

(9) EVIDENCE APPENDIX

1. Attachment I (4 pages) – Copy of pages of Webster's II New Riverside Dictionary: This evidence was submitted to the U.S. Patent and Trademark Office in a Response to Office Action dated June 4, 2004. The Examiner acknowledged receipt of the Response in his Final Office Action dated June 23, 2004.

2. Attachment II (4 pages) – Copy of U.S. Patent No. 4,043,413: This evidence was submitted to the U.S. Patent and Trademark Office in a Response to Office Action dated June 4, 2004. The Examiner acknowledged receipt of the Response in his Final Office Action dated June 23, 2004.

(10) RELATED PROCEEDINGS APPENDIX

None.

ATTACHMENT I (4 Pages)

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a city or it : job. 6. ste : stead. e or series eat <took ced, plac- or order : lán't place x or order. > 5. To fin- 3 finishers

Not beautiful : homely. —*n.* An extensive region of level, treeless land. —*adv.* In a plain manner. —*plain'ty* *adv.* —*plain'ness* *n.*

plain-clothes man (plán'klôz'men) *n.* Also **plain-clothes-man** (plán'klôz'men) *n.* A police officer who wears civilian clothes while on duty.

Plains Indian (plánz) *n.* A member of any of the American Indian peoples inhabiting the Great Plains of North America.

plain-spo-ken (plán'spō'ken) *adj.* Candid : straightforward.

plaint (plánt) *n.* 1. A complaint. 2. An utterance of sorrow or grief : lamentation.

plain-tiff (plán'tíf) *n.* The party that files a complaint in a lawsuit.

plain-tive (plán'tiv) *adj.* Expressive of sorrow or melancholy : woeful. —*plain'tively* *adv.* —*plain'tive-ness* *n.*

plait (plát, plát) *n.* 1. A braid, esp. of hair. 2. A pleat. —*plait* *v.*

plan (plán) *n.* 1. A method or scheme for achieving or doing something. 2. An aim : goal. 3. A diagram or drawing prepared to scale. —*v.* **planned**, **plan-ning**. 1. To draw up a plan of : design <planned a new shopping mall> 2. To have in mind : intend. 3. To formulate a way to achieve or do. —*plan'-ner* *n.*

plan-ar (plán'ar, -nár) *adj.* 1. Of or in a geometric plane. 2. Flat <a planar surface>. —*plan-ar'i-ty* (plán'ar'í-tē) *n.*

plane (plán) *n.* 1. A surface containing all the straight lines required to connect any 2 points on it. 2. A level or flat surface. 3. A level of development or existence. 4. An airplane. 5. A supporting surface of an airplane.

plane (plán) *n.* A tool for leveling or smoothing a wood surface. —*v.* **planed**, **plan-ing**. To level or smooth with or as if with a plane. —*plan'er* *n.*

plan-et (plán'it) *n.* A nonluminous celestial body illuminated by light from a star around which it revolves. —*plan'e-tar'y* (-í-tér'ē) *adj.*

plan-e-tar-i-um (plán'í-tár'ē-əm) *n.* **pl-ums** or **-i-a** (-ē-ə). 1. A device to project images of celestial bodies in their courses, as onto the inner surface of a dome. 2. A room or building containing a planetarium.

plane tree *n.* A tree of the genus *Platanus*, with ball-shaped clusters of fruit and outer bark that usu. flakes off in patches.

plan-gent (plán'jənt) *adj.* 1. Deep and reverberating in sound. 2. Plaintive. —*plan'-gen-cy* *n.* —*plan'gent-ly* *adv.*

plank (pláŋk) *n.* 1. A long, thick board. 2. An item in a political platform. —*v.* 1. To cover with planks. 2. To cook and serve (meat or fish) on a board. 3. To set or put down with force.

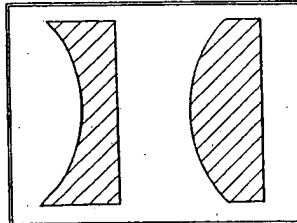
plank-ing (pláŋ'king) *n.* 1. Planks as a whole. 2. Something made of planks.

plank-ton (pláŋk'tən) *n.* Microscopic plant and animal organisms that float or drift in great numbers in bodies of water. —*plank-ton'ic* (-tón'ik) *adj.*

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planoconcave □ platitude

plano-con-cave (plá'nō-kōn-kāv', -kōn'-kāv') *adj.* Flat or plane on one side and concave on the other.



(Left) planoconcave and (right) planoconvex

plano-con-vex (plá'nō-kōn-véks', -kōn'-véks') *adj.* Flat or plane on one side and convex on the other.

plant (plánt) *n.* 1. An organism typically having cellulose cell walls, manufacturing its own food by photosynthesis, and being incapable of locomotion. 2. A soft-stemmed, herbaceous plant as distinguished from a tree or shrub. 3. An establishment for industry or manufacturing : factory. 4. The physical structures, equipment, and fixtures of an institution. —*v.* 1. To place (e.g., seeds) in the ground for growing. 2. To set firmly or forcibly in position. 3. To start : establish. 4. To instill <plant an idea> 5. To place with intent to spy or deceive.

plantain (plán'ton) *n.* A weedy plant of the genus *Plantago*, esp. *P. major*, with a spike of small greenish flowers.

plantain (plán'ton) *n.* A large tropical plant, *Musa paradisiaca*, resembling the banana and bearing similar fruit.

plan-tar (plán'tor, -tár') *adj.* Of, relating to, or located on the sole of the foot.

plan-tation (plán-tá'shən) *n.* 1. A sizable group of trees or plants under cultivation. 2. A large landed estate devoted to crop production, usu. by resident workers.

plant-er (plán'tar) *n.* 1. One that plants, esp. a sowing tool or machine. 2. One who owns or manages a plantation. 3. An ornamental container for a plant.

plaque (plák) *n.* 1. A flat piece often made of metal, ornamented or engraved for mounting as on a building or memorial. 2. An ornamental pin : brooch. 3. A deposit that builds up on a tooth or the inner lining of a blood vessel.

plash (pláš) *n.* 1. A light splash. 2. The sound of a splash. —*plash* *v.*

plasma (pláz'ma) *n.* 1. The clear, liquid part of blood, lymph, or intramuscular fluid. 2. The watery part of milk : whey. 3. Physics. Electrically neutral, usu. hot gas composed of ions, electrons, and neutral particles. —*plas-mat'ic*, *plas'mic* *adj.*

plas-ter (plás'tar) *n.* 1. A paste that hardens while drying, used for covering walls and ceilings. 2. Plaster of Paris. 3. An often medicated pastelike mixture spread on a piece of material and applied to a part of the body. —*v.* To coat or cover with or as if with plaster. —*plas'ter-y* *adj.*

plas-ter-board (plás'tar-bórd', -bórd') *n.* A wallboard made up of layers of fiberboard or paper over a plaster core.

plaster of Paris *n.* A quick-setting paste of white gypsum powder and water, used esp. for casts and statuary molds.

plas-tic (plás'tik) *adj.* 1. Capable of being shaped or molded : malleable. 2. Of, marked by, or using expressive shaping or modeling <the plastic arts> 3. Marked by artificiality : synthetic <the plastic world of advertising> —*n.* A synthetically produced material that can be molded and hardened into objects or formed into films or textile fibers. —*plas-tic-i-ty* (plás'tis'tí-tē) *n.* —*plas'tic-ize* *v.*

plastic explosive *n.* A versatile explosive substance in the form of a moldable dough-like solid.

plastic surgery *n.* Surgery concerned with repairing, restoring, or remodeling bodily parts chiefly by bone or tissue transfer. —*plastic surgeon* *n.*

plas-tique (plás'ték) *n.* A plastic explosive.

plate (plát) *n.* 1. A flat, thin piece of material, as metal. 2. a. Forged, rolled, or cast metal in sheet form. b. A flat piece of engraved metal. 3. a. A prepared surface, as of metal or plastic, from which printing is done. b. A print from such a surface. c. Something printed from an engraving. 4. A sheet of glass or metal sensitized to light and used in photography. 5. A part made of metal or plastic that is fitted to the gums to hold false teeth in place. 6. Baseball. Home plate. 7. A shallow, usu. circular dish. 8. Food and service for one person. 9. Household articles, as forks and knives, made of or plated with gold or silver. —*v.* **plat-ed**, **plat-ing**. 1. To cover with a thin layer of metal, esp. gold or silver. 2. To make a printing surface from or for.

pla-teau (plá-tō') *n.*, *pl. -teaus* or **-teaux** (-tōz'). 1. A level expanse of elevated land. 2. a. A stage of development. b. A stable period or state.

plate glass *n.* Rolled and polished glass in thick, strong sheets.

plat-en (plát'n) *n.* 1. A flat metal plate that holds the paper against the type in a printing press. 2. The roller in a typewriter against which the keys hit.

plat-form (plát'fōrm) *n.* 1. An elevated horizontal surface, as for speakers or at a railroad station. 2. A formal statement of principles or policy, as of a political party.

plat-ing (plát'ing) *n.* A thin layer, coating, or covering of metal or of metal plates.

plat-i-num (plát'n-əm) *n.* Symbol Pt A silver-white, corrosive-resistant metallic element used esp. in jewelry.

plat-i-tude (plát'itōd', -itōd') *n.* A trite

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